

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, MAY 21, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, MAY 20, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0075856 BRIGHTON 68 APTS v. FISHER, REBECCA

The motion to set aside default judgment is continued to Thursday, June 11, 2020 at 8:30 a.m. in Department 42.

2. M-CV-0075870 ELITE ACCEPTANCE v. CHELOSSI, ANTHONY

The writ of possession hearing is dropped from the calendar as no moving papers were filed with the court.

3. M-CV-0076036 BAGHRI HOTEL v. HERSHIPS, HOWARD

The demurrer and motion to quash are continued to Thursday, June 11, 2020 at 8:30 a.m. in Department 42.

///

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

4. S-CV-0032090 INVEST RETRIEVERS v. TRAN, LOUIE

Plaintiff's motion for charging order as to judgment debtor Louie Tran's interest in Natural Effect, LLC is granted. A charging order is entered against judgment debtor Louie Tran's interest in Natural Effect, LLC, drawing exclusively upon judgment debtor Louie Tran's share of the profits and surplus from Natural Effect, LLC.

5. S-CV-0036850 BUHLER, JANET v. FRANK LAW GROUP

The motion for determination of good faith settlement is continued to Friday, June 5, 2020 at 8:30 a.m. in Department 3, located at the Historic Auburn Courthouse, to be heard by the Honorable Michael W. Jones.

6. S-CV-0039958 BANK OF HOPE v. PARK, SUNGMIN

The two motions for summary judgment are continued to Thursday, July 30, 2020 at 8:30 a.m. in Department 42 pursuant to the ex parte order entered on May 15, 2020.

7. S-CV-0040173 CAMPUS OAKS APTS 1 v. DAHLIN GROUP

The (1) review hearing re entry of judgment; (2) motion for new trial; (3) motion for new trial; and (4) motion for judgment notwithstanding the verdict are continued to Friday, June 5, 2020 at 8:30 a.m. in Department 3, located at the Historic Auburn Courthouse, to be heard by the Honorable Michael W. Jones.

8. S-CV-0041128 ALVAREZ, DAVID v. CIBOEUREKA

Defendant Ciboeureka, LLC's motion to set aside default is granted. A party make seek to set aside any void judgment or order. (Code of Civil Procedure section 473(d).) In personal injury actions, the amount of damages may not be stated in the complaint but must be set forth in a statement of damages. (Code of Civil Procedure sections 425.10(a), (b), 425.11(c).) This statement of damages must be served on the defendant before the entry of any default. (Code of Civil Procedure section 425.11(c); *Department of Fair Employment & Housing v. Ottovich* (2014) 227 Cal.App.4th 706, 712.) The entry of default prior to service of a statement of damages renders the default invalid and subject to set aside. (*Ibid.*) Ciboeureka was defaulted on June 20, 2018. The statement of damages, however, was not filed and served until February 7, 2020. The

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

default must be set aside since plaintiff failed to serve the statement of damages prior to entry of default.

The default, entered on June 20, 2018, is set aside. Defendant Ciboeureka, LLC shall file and serve its answer or general denial by June 1, 2020. The default prove-up hearing set for March 26, 2020 is vacated. A case management conference, to set trial dates, is set for Tuesday, June 30, 2020 at 10:00 a.m. in Department 40.

9. S-CV-0041488 BOSLEY, CHRISTINE v. EUROMOTORS ROCKLIN

Defendant European Rocklin, Inc.'s (Audi Rocklin's) Motion for Summary Adjudication

Rulings on Objections

Plaintiffs' objections to defendant's evidence relating to defendant's separate statement of facts nos. 32, 33, 34, 35 and 36 are overruled. Plaintiffs' objections to defendant's evidence relating to defendant's separate statement of facts nos. 39, 43, 44, 52, 56, 58, 59 and 62 are sustained.

Defendant's objections nos. 1, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 20 are overruled. Defendant's objections nos. 2, 3, 4, 5, 6, 9, 19, 21, 22 and 23 are sustained.

Ruling on Motion

Defendant European Rocklin, Inc., doing business as Audi Rocklin, seeks summary adjudication against what Audi Rocklin frames as a claim for negligent entrustment alleged in plaintiffs' complaint. The trial court engages in a specific analysis when reviewing a motion for summary adjudication. First, it must define the scope of the motion by looking to the *operative pleading*. It is the pleading, not defendant's framing, that serves as the "outer measure of materiality" for a motion for summary adjudication in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) The pleading identifies the issues raised and the motion must address these issues. Second, the moving party must meet its initial burden. A defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (Code of Civil

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

Procedure section 437c(p)(2).) The trial court must view the supporting evidence, and the inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The final part of the analysis is reached if the moving party meets its initial burden. Only if the defendant meets its initial burden does the burden shift to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (Code of Civil Procedure section 437c(p)(2).) The court reviews Audi Rocklin's motion keeping these principles in mind.

Plaintiffs' complaint alleges two causes of action: wrongful death and a survivor's claim. (see generally Complaint.) Plaintiffs allege Audi Rocklin was the owner of the Audi Q5 loaner vehicle, negligently entrusting, managing, maintaining, repairing, manufacturing, and designing the vehicle, which caused the collision that killed plaintiffs' son, Dominic Antonio Genduso. (Id. at ¶¶4, 7, 8, 11-14.) Plaintiffs allege Audi Rocklin negligently hired, trained, and/or supervised, which contributed to the collision that killed their son. (Id. at ¶6.) Audi Rocklin's framing of the motion to address only negligent entrustment ignores the other allegations within the complaint, which in and of itself is a fatal procedural error to its motion. Summary adjudication can only be granted where it completely disposes of a cause of action. (Code of Civil Procedure section 437c(f)(1).) A request for summary adjudication based on a cause of action resting on "this or that premise" is not valid; the adjudication must be aimed at the entire cause of action or no order for summary adjudication can be entered. (*McCaskey v. California State Automobile Assn.* (2010) 189 Cal.App.4th 947, 975.)

Even if the motion is treated as properly framed, which it is not, Audi Rocklin has not met its initial burden. Again, plaintiffs allege causes of action for wrongful death and a survivor's claim. Wrongful death is a statutory claim with the purpose of compensating certain individuals for the losses associated with the decedent's death. (Code of Civil Procedure sections 377.60-377.62; *Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) A cause of action for wrongful death consists of the tort, the resulting death, and the damages consisting of pecuniary losses of specific individuals. (*Ibid.*) A survivor's claim is a cause of action that belonged to the decedent prior to death but survives death by statute. (Code of Civil Procedure section 377.30; *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1264-1265.) Audi Rocklin asserts each of these causes of action involve the tort of negligent entrustment.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

“ ‘It is generally recognized that one who places or entrusts his [or her] motor vehicle in the hands of one whom he [or she] knows, or from the circumstances is charged with knowing, is incompetent or unfit to drive, may be held liable for an injury inflicted by the use made thereof by that driver, provided the plaintiff can establish that the injury complained of was proximately caused by the driver’s disqualification, incompetency, inexperience, or recklessness [¶] “Liability for the negligence of the incompetent driver to whom an automobile is entrusted does not arise out of the relationship of the parties, but from the act of entrustment of the motor vehicle, with permission to operate the same, to one whose incompetency, inexperience, or recklessness is known or should have been known to the owner.” [Citations.] [¶] Under the theory of “negligent entrustment,” liability is imposed on vehicle owner or permitter because of his [or her] own independent negligence and not the negligence of the driver, in the event the plaintiff can prove that the injury or death resulting therefrom was proximately caused by the driver’s incompetency.’ [Citations.]” (*Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703, 708-709.) “Liability for negligent entrustment amounts to a determination whether a duty exists to anticipate and guard against the negligence of others. [Citation.]” (*Lindstrom v. Hertz Corp.* (2000) 81 Cal.App.4th 644, 648.) The plaintiff must show the defendant owed a legal duty, breached that duty, and the breach was a proximate cause of plaintiff’s injuries. (*Ibid.*)

From the admissible evidence presented here, it cannot be said that Audi Rocklin owed no legal duty to plaintiffs or their decedent son. Entities that loan vehicles may be held liable for negligently entrusting their vehicles to customers. (see c.f. *Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703; *Lindstrom v. Hertz Corp.* (2000) 81 Cal.App.4th 644; *Hartford Accident & Indemnity Co. v. Abdullah* (1979) 94 Cal.App.3d 81.) The evidence presented by Audi Rocklin shows defendant Michael Weston presented a driver’s license that included restrictive language on the back of the license stating, “Restrictions: 28-Restricted to operating vehicles equipped with an IID 96-ignition interlock device [IID] repaired.” (Defendant’s Evidence, Exhibit 4 – Weston Deposition, p. 223:21-225:7-18.) The restriction does not indicated it terminated as of a specific date. Employees of Audi Rocklin did not inquire of Weston regarding this restrictive language prior to loaning him the Audi Q5. (*Ibid.*) Defendant’s argument that the restriction had expired as of the time the vehicle was loaned to Weston does not carry the day for defendant because the evidence presented shows Audi Rocklin did not even inquire as to this restriction that appeared prominently on the back of the driver’s license. (*Ibid.*) This evidence, in light of the totality of the circumstances at the time the vehicle was

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

loaned and the reasonable inferences to be drawn therefrom, falls short of negating any knowledge of Weston's incompetence and/or reckless driving on the part of Audi Rocklin. The issue is whether Weston's incompetency, inexperience, or recklessness was known or should have been known to Audi Rocklin at the time the vehicle was loaned. Its failures to notice or to inquire regarding the printed license restriction are facts material to a determination of whether Audi Rocklin was negligent in loaning the vehicle to Weston. Audi Rocklin has failed to meet its initial burden.

Even if the court were to determine Audi Rocklin had met its initial burden, which it does not, plaintiffs have submitted sufficient evidence to establish a triable issue of material fact. Plaintiffs submit evidence that Weston previously took his A3 to Audi Rocklin for servicing with an IID installed in his vehicle. (Plaintiffs' SSUMF Nos. 8-10.) Employees at Audi Rocklin recalled that Weston's A3 had previously had an IID device installed in his vehicle. (Id. at Nos. 10-11.) The driver's license presented by Weston at the time Audi Rocklin loaned Weston the Q5 included the restriction language on the back of the license. (Id. at Nos. 6, 7.) The employee at Audi Rocklin, however, did not check the back of Weston's license and Weston was not asked about his driving background. (Id. at Nos. 16-18, 21.) Again, this evidence, and the reasonable inferences to be drawn from the evidence, sufficiently establishes a triable issue regarding whether Audi Rocklin is liable to plaintiffs for its decision to loan Weston a vehicle despite its prior knowledge of Weston's driving restrictions. For all of the foregoing reasons, the motion is denied.

///

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

10. S-CV-0042286 SHILL, MARIA v. GENERAL MOTORS

Plaintiffs' Motion to Compel Deposition of General Motors LLC's Person Most Knowledgeable and Sanctions

The motion is granted. The court finds plaintiffs made good faith efforts to meet and confer with defendant, who failed to take meaningful steps to coordinate a deposition date with plaintiffs. Defendant General Motors shall produce its person most knowledgeable on a date, time, and at a location as noticed by plaintiffs. Plaintiffs are awarded \$1,160.00 in sanctions.

Plaintiffs' Motion to Compel Deposition of John L. Sullivan's Person Most Knowledgeable and Sanctions

The motion is granted. The court finds plaintiffs made good faith efforts to meet and confer with defendant, who failed to take meaningful steps to coordinate a deposition date with plaintiffs. Defendant John L. Sullivan shall produce its person most knowledgeable on a date, time, and at a location as noticed by plaintiffs. Plaintiffs are awarded \$1,560.00 in sanctions.

11. S-CV-0042878 GUIDE ENGINEERING v. FCM CAPITAL PARTNERS

Plaintiff's Motion to Compel Further Responses to Special Interrogatories

The motion is denied. Defendant has made a sufficient showing justifying its answers and/or objections to special interrogatories nos. 24, 25, and 26.

Plaintiff's Motion for Leave to File Second Amended Complaint (SAC)

The motion is granted. Plaintiff may file and serve its second amended (SAC) complaint by June 1, 2020.

12. S-CV-0043244 JONES, LLOYD v. GUALCO, TIMOTHY

The motion for vexatious litigant determination is continued to Thursday, June 11, 2020 at 8:30 a.m. in a department to be assigned to be heard by the Honorable Steven J. Howell.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR MAY 21, 2020 AT 8:30 A.M.

13. **S-CV-0043886 DUMONT, RICHARD v. WILLIAMS, JIMMY**

Cross-Defendants' Demurrer to the Cross-Complaint

The demurrer is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) All properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A review of the second cause of action for intentional infliction of emotional distress shows that the allegations are insufficient to allege extreme and outrageous conduct or that cross-complainants suffered emotional distress due to the conduct of cross-defendants.

Cross-complainants shall file and serve their first amended cross-complaint by June 1, 2020.

Cross-Defendants' Motion to Strike the Cross-Complaint

The motion is granted. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (Code of Civil Procedure section 437(a).) The allegations on page 4, lines 5-9 are irrelevant to the current litigation and stricken from the pleading.